

REMARKS

In the Claims:

Claims 1 to 30 are pending in the present application.

In the Office Action dated July 31, 2006, Claims 1, 13, 24, and all dependent claims therefrom have been rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claims 1 to 5, 8 to 11, 13, 15, 17, 18, 20, 23 to 28, and 30 have been rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 6,254,567 ("*Treu*") in view of U.S. Patent No. 5,776,091 ("*Brugger*"). Finally, Claims 6, 7, 14, 22, and 29 have been rejected under 35 U.S.C. § 103(a) as being unpatentable over *Treu* in view of *Brugger* and further in view of U.S. Patent No. 6,409,699 ("*Ash*").

Rejection of Claims 1, 13, and 24 under 35 U.S.C. § 112, second paragraph

In the Office Action Claims 1, 13, 24, and all dependent claims therefrom have been rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The Office Action indicates that it is unclear of the term "only a single fluid loop" as it applies to FIGS. 5A and 5B. The Specification states that "[t]he dialysate then circulates along the fluid loop 158 defined by the fluid circuit 130 coupled to the patient 136 such that the dialysate can pass into, through and out of the peritoneal cavity of the patient..." (p. 28, lines 18-21). The fluid circuit includes a single fluid loop, as indicated in Claims 1, 13, and 24. Therefore, the term "fluid circuit" is broader than the term "fluid loop."

The Specification states that "fluid circuit and/or fluid loop of the present invention can be made of one or more fluid lines interconnected in any suitable manner" (p. 30, lines 23-25). Accordingly, the fluid loop and/or fluid circuit encompasses the entire network of fluid lines through which the dialysate travels. The term "single fluid loop" includes any and all of the fluid lines that are connected together. The fluid loop and/or fluid circuit does not define a single route that the fluid must travel, but instead describes the manner in which the fluid is contained. The Office Action describes several routes through which the dialysate may travel within the single fluid loop, but each of these routes are within the single fluid loop and the entire fluid circuit is connected to the patient by way of a catheter.

Applicants assert that the term “single fluid loop” is sufficiently defined by the Specification and the figures. Therefore, Applicants respectfully request that the objection to Claims 1, 13, 24, and the dependent claims therefrom, under 35 U.S.C. § 112, second paragraph, be withdrawn.

Rejection under 35 U.S.C. § 103(a) over *Treu* in view of *Brugger*

In the Office Action Claims 1 to 5, 8 to 11, 13, 15, 17, 18, 20, 23 to 28, and 30 have been rejected under 35 U.S.C. § 103(a) as being unpatentable over *Treu* in view of *Brugger*. The systems of independent Claims 1, 13, and 24 require a single fluid loop through which a therapy fluid circulates. *Treu* does not teach a single fluid loop. Instead, *Treu* teaches two fluid loops that are operatively connected by way of a regeneration assembly. Accordingly, *Treu* does not disclose a system for providing peritoneal dialysis that includes only a single loop through which a therapy fluid circulates. Thus, *Treu* fails to teach at least one element of independent Claims 1, 13, and 24 of the present application.

Brugger, like *Treu*, teaches two fluid loops that are connected by way of a dialyzer for performing patient dialysis. In *Brugger*, the therapy fluid flows through the dialyzer for hemodialysis treatment and not the patient's peritoneum for peritoneal dialysis. Because *Brugger* is directed to hemodialysis treatment in which the therapy fluid does not flow through the peritoneum of the patient, the combination of the system taught in *Brugger* would not be combinable with the system for providing peritoneal dialysis taught in *Treu*. Further, there is not teaching, suggestion, or motivation to combine the system of *Brugger* with the system of *Treu* to produce a system for providing peritoneal dialysis that includes only a single loop through which a therapy fluid is circulated. *Brugger* fail to cure the deficiency of *Treu*, hence, any combination of *Brugger* with *Treu* fails to be an obvious combination to one skilled in the art. Thus, the combination of *Treu* and *Brugger* fails teach at least one element of Claims 1, 13, and 24 of the present application.

In addition, the Office Action indicates that *Treu* also does not disclose a discharge rate less than the circulation rate to allow the therapy fluid to be circulated a plurality of times along the fluid circuit. Although *Brugger* teaches that the drain pump (84) pumps at a higher flow rate than the dialysate pump (74), this differential in flow rates is not done to circulate the therapy fluid within the fluid circuit multiple times. Instead, *Brugger* explains that “[t]he drain pump 84

is operated at a greater volumetric pumping rate compared to the volumetric pumping rate of the dialysate pump 74 when it is desired to transfer components from the dialysate into the blood by fluid transport within the dialyzer 54” (Col. 6, lines 19-23). *Brugger* fails to teach circulating the dialysate within the fluid circuit more than once, and in light of the disclosure of *Brugger*, it would not be obvious to one skilled in the art to utilize different flow rates to circulate dialysate within the fluid circuit more than once. Therefore, the combination of the teachings of *Treu* with the teachings of *Brugger* are missing at least another element of independent Claims 1, 13, and 24 of the present application. Accordingly, Applicants assert that independent Claims 1, 13, and 24 are patentable over the *Treu* and *Brugger* references either individually or in combination, and Applicants respectfully request that the rejection of Claims 1, 13, and 24 under 35 U.S.C. § 103(a) over *Treu* in view of *Brugger* be withdrawn.

Claims 2 to 5, 8 to 11, 15, 17, 18, 20, 23, 25 to 28, and 30 are dependent claims, and each of these dependent claims include all of the limitations of the independent claim from which they depend. Accordingly, the patentability of each of these claims flows from the patentability of the independent claim from which they depend. Applicants therefore respectfully request the rejections of Claims 2 to 5, 8 to 11, 15, 17, 18, 20, 23, 25 to 28, and 30 under 35 U.S.C. § 103(a) over *Treu* in view of *Brugger* be withdrawn for at least the reasons provided above for the independent claims from which they depend.

Rejection under 35 U.S.C. § 103(a) over *Treu* in view of *Brugger* and *Ash*

In the Office Action, Claims 6, 7, 14, 22, and 29 have been rejected under 35 U.S.C. § 103(a) as being unpatentable over *Treu* in view of *Brugger* and further in view of *Ash*. Claims 6, 7, 14, 22, and 29 are dependent claims that include all of the limitations of the independent claim from which they depend. Therefore, the allowability of Claims 6, 7, 14, 22, and 29 flows from the allowability of the independent claim from which they depend. The combination of *Treu* and *Brugger* fail to teach at least one element required in each of the independent claims, and *Ash* fails to cure the deficiencies of the combination of *Treu* and *Brugger*. In particular, *Ash* does not provide for a continuous circuit or loop through which a therapy fluid circulates. Hence, the teachings of *Ash* cannot be combined with either *Treu* or *Brugger*, and such a combination would not be obvious to one skilled in the art. Accordingly, Claims 6, 7, 14, 22, and 29 are patentable over *Treu* in view of *Brugger* and *Ash*. Therefore, Applicants respectfully request the rejection

of Claims 6, 7, 14, 22, and 29 under 35 U.S.C. § 103(a) over *Treu* in view of *Brugger* and *Ash* be withdrawn for at least the reasons provided above for the independent claim from which they depend.

SUMMARY

Applicants assert that pending Claims 1 to 30 are in condition for allowance. Applicants respectfully request the Examiner to grant early allowance of the present application. The Examiner is invited to contact the undersigned attorney for the Applicants via telephone if such communication would expedite the allowance of this application.

No fees are believed due relating to the filing of this Response. However, the Commissioner is hereby authorized to charge deposit account 02-1818 for any fees which are due and owing from this filing.

Respectfully submitted,

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